

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY GENERAL
BILL)

A BILL FOR

1 An Act relating to the possession, distribution, and reporting
2 of obscene material, and making penalties applicable.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DRAFT

1 Section 1. Section 728.1, subsection 3, Code 2011, is
2 amended to read as follows:

3 3. "*Material*" means any book, magazine, newspaper or
4 other printed or written material or any picture, drawing,
5 photograph, motion picture, or other pictorial representation
6 or any statue or other figure, or any recording, transcription
7 or mechanical, chemical or electrical reproduction, or any live
8 transmission, or any other articles, equipment, machines or
9 materials.

10 Sec. 2. Section 728.1, subsection 7, paragraphs e through g,
11 Code 2011, are amended to read as follows:

12 e. Sadomasochistic abuse of a minor for the purpose of
13 arousing or satisfying the sexual desires of a person who may
14 view a visual depiction of the abuse.

15 f. Sadomasochistic abuse of a person by a minor for the
16 purpose of arousing or satisfying the sexual desires of a
17 person who may view a visual depiction of the abuse.

18 g. Nudity of a minor for the purpose of arousing or
19 satisfying the sexual desires of a person who may view a visual
20 depiction of the nude minor.

21 Sec. 3. Section 728.1, Code 2011, is amended by adding the
22 following new subsection:

23 NEW SUBSECTION. 11. "*Visual depiction*" means but is
24 not limited to any picture, slide, photograph, digital or
25 electronic image, negative image, undeveloped film, motion
26 picture, videotape, digital or electronic recording, live
27 transmission, or other pictorial or three-dimensional
28 representation.

29 Sec. 4. Section 728.12, subsection 1, Code 2011, is amended
30 to read as follows:

31 1. It shall be unlawful to employ, use, persuade, induce,
32 entice, coerce, solicit, knowingly permit, or otherwise cause
33 or attempt to cause a minor to engage in a prohibited sexual
34 act or in the simulation of a prohibited sexual act. A person
35 must know, or have reason to know, or intend that the act

1 or simulated act may be photographed, filmed, or otherwise
2 preserved in a ~~negative, slide, book, magazine, computer,~~
3 ~~computer disk, or other print or visual medium, or be preserved~~
4 ~~in an electronic, magnetic, or optical storage system, or in~~
5 ~~any other type of storage system~~ visual depiction. A person
6 who commits a violation of this subsection commits a class
7 "C" felony. Notwithstanding section 902.9, the court may
8 assess a fine of not more than fifty thousand dollars for each
9 offense under this subsection in addition to imposing any other
10 authorized sentence.

11 Sec. 5. Section 728.12, subsection 3, unnumbered paragraph
12 1, Code 2011, is amended to read as follows:

13 It shall be unlawful to knowingly purchase or possess a
14 ~~negative, slide, book, magazine, computer, computer disk, or~~
15 ~~other print or visual medium, or an electronic, magnetic, or~~
16 ~~optical storage system, or any other type of storage system~~
17 ~~which depicts~~ visual depiction of a minor engaging in a
18 prohibited sexual act or the simulation of a prohibited sexual
19 act. A person who commits a violation of this subsection
20 commits an aggravated misdemeanor for a first offense and a
21 class "D" felony for a second or subsequent offense. For
22 purposes of this subsection, an offense is considered a second
23 or subsequent offense if, prior to the person's having been
24 convicted under this subsection, any of the following apply:

25 Sec. 6. Section 728.14, Code 2011, is amended to read as
26 follows:

27 **728.14 Commercial film and photographic print processor**
28 **reports of depictions of minors engaged in prohibited sexual**
29 **acts.**

30 1. A commercial film and photographic print processor
31 who has knowledge of or observes, within the scope of the
32 processor's professional capacity or employment, a ~~film,~~
33 ~~photograph, video tape, negative, or slide which depicts~~ visual
34 depiction of a minor whom the processor knows or reasonably
35 should know to be under the age of eighteen, engaged in a

1 prohibited sexual act or in the simulation of a prohibited
2 sexual act, shall report the visual depiction to the county
3 attorney immediately or as soon as possible as required in this
4 section. The processor shall not report to the county attorney
5 visual depictions involving mere nudity of the minor, but shall
6 report visual depictions involving a prohibited sexual act.
7 This section shall not be construed to require a processor
8 to review all ~~films, photographs, video tapes, negatives, or~~
9 ~~slides~~ visual depictions delivered to the processor within the
10 processor's professional capacity or employment.

11 2. For purposes of this section, "*prohibited sexual act*"
12 means any of the following:

- 13 a. A sex act as defined in section 702.17.
14 b. An act of bestiality involving a minor.
15 c. Fondling or touching the pubes or genitals of a minor for
16 the purpose of arousing or satisfying the sexual desires of a
17 person who may view a visual depiction of the act.
18 d. Fondling or touching the pubes or genitals of a person by
19 a minor for the purpose of arousing or satisfying the sexual
20 desires of a person who may view a visual depiction of the act.
21 e. Sadomasochistic abuse of a minor for the purpose of
22 arousing or satisfying the sexual desires of a person who may
23 view a visual depiction of the abuse.
24 f. Sadomasochistic abuse of a person by a minor for the
25 purpose of arousing or satisfying the sexual desires of a
26 person who may view a visual depiction of the abuse.
27 g. Nudity of a minor for the purpose of arousing or
28 satisfying the sexual desires of a person who may view a visual
29 depiction of the nude minor.

30 ~~2-~~ 3. A person who violates this section is guilty of a
31 simple misdemeanor.

32 EXPLANATION

33 This bill relates to the possession, distribution, and
34 reporting of obscene material.

35 The bill modifies the definition of "material" in Code

1 chapter 728 to include live transmissions.

2 Under the bill, the modification of the definition of
3 the term "material" results in changes to the elements of
4 the following criminal offenses within Code chapter 728:
5 dissemination of obscene material to minors (Code section
6 728.2), admitting minors to premises where obscene material is
7 exhibited (Code section 728.3), rental or sale of hard-core
8 pornography (Code section 728.4), sexual exploitation of a
9 minor (Code section 728.12(2)), and telephone dissemination of
10 obscene material (Code section 728.15).

11 The bill also defines the term "visual depiction" within
12 Code chapter 728 to include any picture, slide, photograph,
13 digital or electronic image, negative image, undeveloped film,
14 motion picture, videotape, digital or electronic recording,
15 live transmission, or other pictorial or three-dimensional
16 representation.

17 The bill modifies the elements of the criminal offense of
18 sexual exploitation of a minor in Code section 728.12(1) and
19 (3) by substituting references for a computer and other types
20 of storage systems with the term "visual depiction" as defined
21 by the bill. The bill also substitutes "visual depiction" for
22 storage systems referenced in Code section 728.14 to conform
23 with the sexual exploitation of a minor changes in Code section
24 728.12.

25 In addition, the word "visual" is added before the word
26 "depiction" throughout Code chapter 728 to conform with the
27 changes made by the bill.

28 The changes in the bill to the criminal offense of sexual
29 exploitation of a minor in Code section 728.12(3) are in
30 response to the State v. Muhlenbruch, 728 N.W.2d 212 (Iowa
31 2007).